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HOUSE BILL 856

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Ben Lujan

AN ACT

RELATING TO TAXATION; AMENDING THE GASOLINE TAX ACT TO CHANGE THE DEFINITION OF "RECEIVED" TO PROVIDE A DEDUCTION FOR CERTAIN VOLUMES SOLD BY REGISTERED TRIBAL DISTRIBUTORS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-13-2 NMSA 1978 (being Laws 1971, Chapter 207, Section 2, as amended) is amended to read:

"7-13-2. DEFINITIONS.--As used in the Gasoline Tax Act:

A. "aviation gasoline" means gasoline sold for use in aircraft propelled by engines other than turbo-prop or jet-type engines;

B. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

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1 C. "distributor" means any person, not including
2 the United States of America or any of its agencies except to
3 the extent now or hereafter permitted by the constitution and
4 laws thereof, who receives gasoline in this state.

5 "Distributor" shall be construed so that a person
6 simultaneously may be both a distributor and a retailer or
7 importer;

8 D. "drip gasoline" means a combustible hydrocarbon
9 liquid formed as a product of condensation from either
10 associated or nonassociated natural or casing head gas and
11 that remains a liquid at room temperature and pressure;

12 E. "ethanol blended fuel" means gasoline
13 containing a minimum of ten percent by volume of denatured
14 ethanol, of at least one hundred ninety-nine proof, exclusive
15 of denaturants;

16 F. "fuel supply tank" means any tank or other
17 receptacle in which or by which fuel may be carried and
18 supplied to the fuel-furnishing device or apparatus of the
19 propulsion mechanism of a motor vehicle when the tank or
20 receptacle either contains gasoline or gasoline is delivered
21 into it;

22 G. "gallon" means the quantity of liquid necessary
23 to fill a standard United States gallon liquid measure or that
24 same quantity adjusted to a temperature of sixty degrees
25 fahrenheit at the election of any distributor, but a

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1 distributor shall report on the same basis for a period of at
2 least one year;

3 H. "gasoline" means any flammable liquid
4 hydrocarbon used primarily as fuel for the propulsion of motor
5 vehicles, motorboats or aircraft except for diesel engine
6 fuel, kerosene, liquefied petroleum gas, compressed or
7 liquefied natural gas and products specially prepared and sold
8 for use in aircraft propelled by turbo-prop or jet-type
9 engines;

10 I. "government-licensed vehicle" means a motor
11 vehicle lawfully displaying a registration plate, as defined
12 in the Motor Vehicle Code, issued by the United States or any
13 state, identifying the motor vehicle as belonging to the
14 United States or any of its agencies or instrumentalities or
15 an Indian nation, tribe or pueblo or any of its political
16 subdivisions, agencies or instrumentalities;

17 J. "highway" means every road, highway,
18 thoroughfare, street or way, including toll roads, generally
19 open to the use of the public as a matter of right for the
20 purpose of motor vehicle travel regardless of whether it is
21 temporarily closed for the purpose of construction,
22 reconstruction, maintenance or repair;

23 K. "motor vehicle" means any self-propelled
24 vehicle or device that is either subject to registration under
25 Section 66-3-1 NMSA 1978 or used or that may be used on the

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1 public highways in whole or in part for the purpose of
2 transporting persons or property and includes any connected
3 trailer or semitrailer;

4 L. "person" means an individual or any other
5 entity, including, to the extent permitted by law, any
6 federal, state or other government or any department, agency,
7 instrumentality or political subdivision of any federal, state
8 or other government;

9 M "rack operator" means the operator of a
10 refinery in this state or the owner of gasoline stored at a
11 pipeline terminal in this state;

12 [N. ~~"received" means:~~

13 (1)

14 (a) ~~gasoline that is produced, refined,~~
15 ~~manufactured, blended or compounded at a refinery in this~~
16 ~~state or stored at a pipeline terminal in this state by any~~
17 ~~person is "received" by such person when it is loaded there~~
18 ~~into tank cars, tank trucks, tank wagons or other types of~~
19 ~~transportation equipment or when it is placed into any tank or~~
20 ~~other container from which sales or deliveries not involving~~
21 ~~transportation are made;~~

22 (b) ~~when, however, such gasoline is~~
23 ~~delivered at the refinery or pipeline terminal to another~~
24 ~~person registered as a distributor under the Gasoline Tax Act,~~
25 ~~then it is "received" by the distributor to whom it is so~~

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1 delivered;

2 (c) ~~when such gasoline is delivered at~~
3 ~~the refinery or pipeline terminal to another person not~~
4 ~~registered as a distributor under the Gasoline Tax Act for the~~
5 ~~account of a person that is so registered, it is "received" by~~
6 ~~the distributor for whose account it is delivered; and~~

7 (d) ~~when gasoline is shipped to a~~
8 ~~distributor, or for the account of a distributor, away from~~
9 ~~the refinery or pipeline terminal, it is "received" by the~~
10 ~~distributor where it is unloaded;~~

11 (2) ~~notwithstanding the provisions of~~
12 ~~Paragraph (1) of this subsection, when gasoline is shipped or~~
13 ~~delivered from a refinery or pipeline terminal to another~~
14 ~~refinery or pipeline terminal, such gasoline is not "received"~~
15 ~~by reason of such shipment or delivery;~~

16 (3) ~~any product other than gasoline that is~~
17 ~~blended to produce gasoline other than at a refinery or~~
18 ~~pipeline terminal in this state is "received" by a person who~~
19 ~~is the owner thereof at the time and place the blending is~~
20 ~~completed; and~~

21 (4) ~~except as otherwise provided, gasoline~~
22 ~~is "received" at the time and place it is first unloaded in~~
23 ~~this state and by the person who is the owner thereof~~
24 ~~immediately preceding the unloading, unless the owner~~
25 ~~immediately after the unloading is a registered distributor;~~

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1 ~~in which case such registered distributor is considered as~~
2 ~~having received the gasoline;]~~

3 N. "registered Indian tribal distributor" means an
4 Indian nation, tribe or pueblo recognized by the United States
5 whose reservation or pueblo grant lies wholly or partly in
6 this state, a corporation or other enterprise wholly owned by
7 that Indian nation, tribe or pueblo or a corporation or other
8 enterprise wholly owned by one or more members of that Indian
9 nation, tribe or pueblo that is registered with the department
10 as a distributor pursuant to the Gasoline Tax Act; provided
11 that the department shall register a corporation or other
12 enterprise as an Indian tribal distributor only upon
13 certification by the Indian nation, tribe or pueblo that the
14 corporation or other enterprise is wholly owned by that
15 nation, tribe or pueblo or wholly owned by one or more of its
16 members;

17 0. "retailer" means a person who sells gasoline
18 generally in quantities of thirty-five gallons or less and
19 delivers such gasoline into the fuel supply tanks of motor
20 vehicles. "Retailer" shall be construed so that a person
21 simultaneously may be both a retailer and a distributor or
22 wholesaler;

23 P. "secretary" means the secretary of taxation and
24 revenue or the secretary's delegate;

25 Q. "taxpayer" means a person required to pay

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1 gasoline tax;

2 R. "unloaded" means removal of gasoline from tank
3 cars, tank trucks, tank wagons or other types of
4 transportation equipment into a nonmobile container at the
5 place at which the unloading takes place; and

6 S. "wholesaler" means a person who is not a
7 distributor and who sells gasoline in quantities of thirty-
8 five gallons or more and does not deliver such gasoline into
9 the fuel supply tanks of motor vehicles. "Wholesaler" shall
10 be construed so that a person simultaneously may be a
11 wholesaler and a retailer. "

12 Section 2. A new section of the Gasoline Tax Act, Section
13 7-13-2.1 NMSA 1978, is enacted to read:

14 "7-13-2.1. [NEW MATERIAL] WHEN GASOLINE RECEIVED AND BY
15 WHOM --

16 A. Gasoline that is produced, refined,
17 manufactured, blended or compounded at a refinery in this
18 state or stored at a pipeline terminal in this state by a
19 person is received by that person when it is loaded there into
20 tank cars, tank trucks, tank wagons or other types of
21 transportation equipment, or when it is placed there into a
22 tank or other container from which sales or deliveries not
23 involving transportation are made; however:

24 (1) when gasoline is delivered at the
25 refinery or pipeline terminal to a person registered as a

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1 distributor pursuant to the Gasoline Tax Act, then it is
2 received there by the distributor to whom it is delivered at
3 the time of the delivery;

4 (2) when gasoline is delivered at the
5 refinery or pipeline terminal to a person not registered as a
6 distributor pursuant to the Gasoline Tax Act for the account
7 of a person that is registered as a distributor, it is
8 received there by the distributor for whose account it is
9 delivered at the time of delivery; and

10 (3) gasoline is not received when it is
11 shipped from one refinery or pipeline terminal to another
12 refinery or pipeline terminal.

13 B. Gasoline imported into New Mexico by any means
14 other than in the fuel supply tank of a motor vehicle or by
15 pipeline is received at the time and place it is imported into
16 this state. The person who owns the gasoline at the time of
17 importation receives the gasoline at the time and place of
18 importation unless the gasoline is delivered to a person who
19 is registered as a distributor pursuant to the Gasoline Tax
20 Act, in which case the distributor is deemed to have received
21 the gasoline at the time and place of importation.

22 C. Any product other than gasoline that is blended
23 in this state to produce gasoline other than at a refinery or
24 pipeline terminal is received by the person who is the owner
25 of the gasoline at the time and place the blending is

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1 completed.

2 D. If gasoline is received within the exterior
3 boundaries of an Indian reservation or pueblo grant and the
4 gasoline tax is not paid with respect to the gasoline by the
5 person receiving the gasoline within the exterior boundaries
6 of the Indian reservation or pueblo grant, the gasoline is
7 also received when the gasoline is transported off the
8 reservation or pueblo grant by any means other than in the
9 fuel supply tank of a motor vehicle. In such a case, the
10 person who owns the gasoline immediately after the time of
11 transportation off the reservation or pueblo grant or, if the
12 gasoline is delivered to a person registered as a distributor
13 pursuant to the Gasoline Tax Act, the distributor receives the
14 gasoline at the time and place the gasoline is transported off
15 the reservation or pueblo grant. "

16 Section 3. Section 7-13-4 NMSA 1978 (being Laws 1991,
17 Chapter 9, Section 32, as amended) is amended to read:

18 "7-13-4. DEDUCTIONS--GASOLINE TAX.--In computing the
19 gasoline tax due, the following amounts of gasoline may be
20 deducted from the total amount of gasoline received in New
21 Mexico during the tax period, provided satisfactory proof
22 thereof is furnished to the department:

23 A. gasoline received in New Mexico, but exported
24 from this state by a rack operator, distributor or wholesaler
25 other than in the fuel supply tank of a motor vehicle or sold

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1 for export by a rack operator or distributor; provided that,
2 in either case:

3 (1) the person exporting the gasoline is
4 registered in or licensed by the destination state to pay that
5 state's gasoline or equivalent fuel tax;

6 (2) proof is submitted that the destination
7 state's gasoline or equivalent fuel tax has been paid or is
8 not due with respect to the gasoline; or

9 (3) the destination state's gasoline or
10 equivalent fuel tax is paid to New Mexico in accordance with
11 the terms of an agreement entered into pursuant to Section
12 9-11-12 NMSA 1978 with the destination state;

13 B. gasoline received in New Mexico sold to the
14 United States or any agency or instrumentality thereof for the
15 exclusive use of the United States or any agency or
16 instrumentality thereof. Gasoline sold to the United States
17 includes gasoline delivered into the supply tank of a
18 government-licensed vehicle of the United States;

19 C. gasoline received in New Mexico sold to an
20 Indian nation, tribe or pueblo or any political subdivision,
21 agency or instrumentality of that Indian nation, tribe or
22 pueblo for the exclusive use of the Indian nation, tribe or
23 pueblo or any political subdivision, agency or instrumentality
24 thereof. Gasoline sold to an Indian nation, tribe or pueblo
25 includes gasoline delivered into the supply tank of a

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1 government-licensed vehicle of the Indian nation, tribe or
2 pueblo; [~~and~~]

3 D. gasoline received in New Mexico, dyed in
4 accordance with department regulations and used in any manner
5 other than for propulsion of motor vehicles on the highways of
6 this state or motorboats or activities ancillary to that
7 propulsion;

8 E. gasoline received in New Mexico and sold at
9 retail by a registered Indian tribal distributor if the sale
10 occurs on the Indian reservation, pueblo grant or trust land
11 of the distributor's Indian nation, tribe or pueblo and the
12 gasoline is placed into the fuel supply tank of a motor
13 vehicle on that reservation, pueblo grant or trust land; and

14 F. gasoline received in New Mexico and sold by a
15 registered Indian tribal distributor from a nonmobile storage
16 container located within that distributor's Indian
17 reservation, pueblo grant or trust land for resale outside
18 that distributor's Indian reservation, pueblo grant or trust
19 land; provided the department certifies that the distributor
20 claiming the deduction sold no less than one million gallons
21 of gasoline from a nonmobile storage container located within
22 that distributor's Indian reservation, pueblo grant or trust
23 land for resale outside that distributor's Indian reservation,
24 pueblo grant or trust land during the period of May through
25 July 1998; and provided further that the amount of gasoline

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1 deducted by a registered Indian tribal distributor pursuant to
2 this subsection shall not exceed two million five hundred
3 thousand gallons per month, calculated as a monthly average
4 during the calendar year. Volumes deducted pursuant to
5 Subsection E of this section shall not be deducted pursuant to
6 this subsection. "

7 Section 4. EFFECTIVE DATE. --The effective date of the
8 provisions of this act is July 1, 1999.

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